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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/024,478	12/21/2001	James B. Mclesky	82/1376US	4450

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EXAMINER

A, PHI DIEU TRAN

ART UNIT	PAPER NUMBER
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3637

NOTIFICATION DATE	DELIVERY MODE
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09/11/2007

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/024,478

Applicant(s)

MELESKY, JAMES B.

Examiner

Phi D. A

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 June 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 14, 17, 21, 22, 24, 25, 27-29, 31 and 32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 17 and 21 is/are allowed.
- 6) ☒ Claim(s) 14, 22, 24, 25, 27-29, 31-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 7/16/07 has been entered.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 14, 27-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Waters et al (4344505) in view of Helbig (4312423).

Waters et al shows an insulating assembly in combination with an existing attic access, the combination comprising an existing attic access (figure 2) having a surrounding structure (AF, its supporting structures, and C) integral to a ceiling of a building and providing access to the building's attic defining an existing attic access opening therethrough and having an existing trap door (figure 2, the covering which is attached to the pull down device) for closing the existing attic access opening, an insulating cover (26, 20, 24, 22, 28) placed on the surrounding structure and including the door a continuous frame (26, 20, 24, 22) having spaced side walls and spaced end walls and which frame is formed of a free standing insulating material having an

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upper surface and a lower surface, the frame defining an opening there through, the frame opening being aligned with said existing attic access opening (see figure 2), the frame being of a size and configuration so as to enclose the existing access opening when the lower surface is supported on the surrounding structure, a removable closure member (28) formed of a free standing insulating material, the removable closure member including an upper portion forming flanges, the flanges extending laterally outward, the flanges sized and shaped to frictionally and snugly engage an upper surface of each of said side walls and end walls of the frame when the closure member is positioned on the frame in covering relationship with respect to the opening defined by the frame, the insulating material of the closure member and the frame being an expanded polymeric material (col 2 line 40), the trap door comprising a hatch, the trap door is attached to a fold down attic access ladder.

Waters et al does not show the closure member not being bonded to any portion of the continuous frame, the closure member including a central portion, the depending central portion being sized and shaped to fit within the frame opening defined by the frame and frictionally and snugly engage each of the side walls and the end walls of the frame inside the opening to create a first continuous seal with the frame when the closure member is positioned on the frame in a covering relationship with respect to the frame opening, the closure member being not hinged to and detaches from the frame when the first and second continuous seal are broken by a force applied to the closure member through the frame opening, leaving the frame enclosing the existing attic access opening, the first and second seals being generally orthogonal to each other when the member is positioned on the frame in covering relationship with respect to the opening defined by the frame.

Waters et al further discloses that any manner for allowing a person to move the cap away from its position over the opening is within the scope of the invention (col 3 lines 16-21), and an embodiment would be to hingedly move the cover away from the opening.

Helbig shows a removable closure member (24, 28), the closure member not being bonded to any portion of a frame (26), the closure member having a depending central portion (24, the flat portion and the sides thereof), the depending central portion being sized and shaped to fit within the frame opening and frictionally and snugly engage the frame (26) inside the opening to create a first seal with the frame, an upper portion forming flanges, the flanges (the part of 28 which extends beyond the sides of part 24) extending laterally outward relative to the depending central portion, the flanges being sized and shaped to frictionally and snugly engage an upper surface of the frame to create a second continuous seal with the frame when the member is positioned on the frame in covering relationship with respect to the opening defined by the frame, the closure member is not hinged to and detaches from the frame when the first and second seal being broken by a force applied to the member through the opening, the first and second seal being generally orthogonal to each other when the member is positioned on the frame in covering relationship with respect to the opening defined by the frame.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Waters et al to show the closure member including a central portion, the depending central portion being sized and shaped to fit within the opening defined by the frame and frictionally and snugly engage the frame inside the opening to create a first continuous seal with the frame when the closure member is positioned on the frame in covering relationship with respect to the opening defined by the frame, the flanges sitting on the top surface of the frame

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because having the flanges of the closure member fitting over an upper surface of a frame, a central portion of the closure member snugly fitting against the inside surfaces of the frame would enable secure, easy precise positioning and supporting of the closure member on a frame as taught by Helbig.

Waters et al as modified by Helbig shows the closure member not being bonded to any portion of the continuous frame, the closure member including a central portion, the depending central portion being sized and shaped to fit within the frame opening defined by the frame and frictionally and snugly engage each of the side walls and the end walls of the frame inside the opening to create a first continuous seal with the frame when the closure member is positioned on the frame in a covering relationship with respect to the frame opening, the closure member being not hinged to and detaches from the frame when the first and second continuous seal are broken by a force applied to the closure member through the frame opening, leaving the frame enclosing the existing attic access opening, the first and second seals being generally orthogonal to each other when the member is positioned on the frame in covering relationship with respect to the opening defined by the frame.

3. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Waters et al in view of Helbig as applied to claim 14 above, and further in view of Anghinetti et al (3896595).

Waters et al as modified shows all the claimed limitations except for the closure member having at least one handle mounted to extend from a lower surface of the depending central portion of the closure member so as to be accessible within the access opening when the insulating cover is in place.

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Anghinetti et al discloses a handle (38) secured to the lower surface of the depending central body portion (18) of the closure member so as to be accessible within the access opening when the insulating cover is in place to facilitate easy maneuvering of the closure member.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Waters et al's modified structure to show the closure member having at least one handle mounted to extend from a lower surface of the depending central portion of the closure member so as to be accessible within the access opening when the insulating cover is in place because it would enable easy maneuvering of the closure member from the access opening as taught by Anghinetti et al.

4. Claims 24, 31-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Waters et al in view of Helbig as applied to claim 14 above, and further in view of Fuller (4281743) and Porter (5628158).

Waters et al as modified shows all the claimed limitations except for the closure member including at least first and second components each having opposing edges which are configured to cooperatively engage one another to create a tortuous seal path therebetween, and means for adhesively securing the opposing edges in inter-fitted relationship so as to form a unified closure member.

Fuller shows the closure member including at least first and second components (52, 53a, 53b, 52, figure 2) each having opposing edges which are configured to cooperatively engage one another to create a tortuous seal path therebetween, and means for securing the opposing edges in inter-fitted relationship to form a unified closure member.

Porter discloses adhesive means joining panel edges together.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Waters et al's modified structure to show the closure member including at least first and second components each having opposing edges which are configured to cooperatively engage one another to create a tortuous seal path therebetween as taught by Fuller, and means for adhesively securing the opposing edges in inter-fitted relationship to form a unified closure member because having the closure member made of multiple components would opposing edges engaged one another to create tortuous seal path therebetween would enable the creation of a large closure member from smaller pieces and thus resulting in ease of manufacturing and transport, and having the edges of the components joined adhesively would ensure the proper securing of the components together at assembly as taught by Porter.

Waters et al as modified shows the closure member comprising at least two pieces, the two pieces having a seal between them when positioned within the frame in covering relationship with respect to the opening defined by the frame, and the pieces are adhered together.

5. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Waters et al in view of Helbig as applied to claim 14 above, and further in view of Daw et al (4832153).

Waters et al as modified shows all the claimed limitations except for the closure member being coated with a fire retardant material.

Daw et al discloses a closure member being coated with a fire retardant material (col 2 lines 47) to ensure safety against fire.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Waters et al's modified structure to show the closure member being coated

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with a fire retardant material because it would protect the closure from fire as taught by Daw et al.

Response to Arguments

2. Applicant's arguments filed 7/16/07 have been fully considered but they are not persuasive.

With respect to applicant's argument that Waters does not show a continuous frame and a removable closure member, examiner respectfully points out that the action sets forth above clearly points out the structures (26, 20, 24, 22) being the continuous frame and a removable closure member (28). The insulating cover includes both the continuous frame and the removable closure member as claimed and clearly pointed out in the office action. With respect to applicant's argument that Waters only discloses caps with inseparable covers, examiner respectfully points out that the reference discloses a cover (28) hingedly attached to the continuous frame (26, 20, 24, 20) and the reference further discloses that any manner for allowing a person to move the cap away from its position over the opening is within the scope of the invention (col 3 lines 16-21) and an embodiment would be to hingedly move the cover away from the opening. Thus, the reference does not explicitly disclose that the removable cover member must be attached to frame all the time. Waters as modified by Helbig shows the cover being removable as claimed. The argument is thus moot.

The reference further discloses the insulating cover being placed on the surrounding structure (AF, its supporting structures and C) on an existing attic opening. The insulating cover has a continuous frame (26, 24, 20, 22) and closure member (28). The insulating cover is placed

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upon the surrounding structure. The claimed structures are clearly set forth in the action above.

The argument is thus moot.

With respect to Helbig, the secondary reference is relied upon to show the teachings not shown in Waters et al. The combined references show the limitations as claimed.

Applicant's arguments to other secondary references are also moot in view of the statements above.

With respect to the Declaration from Tom Donofrio and George Temme, examiner respectfully sets forth the following. First of all, although they refer to the Energy Guardian kits, it is unclear what structures are involved in the kits. Are they referring to the structures claimed? Are they referring to the structures indicated as allowable in the application? What make up the kits as mentioned? A quick look at applicant's web site also does not clarify the issues. Secondly, how many sets of the kits have been used by them so as to qualify as evidencing commercial success? Thirdly, it is expected that once a person limits the area of escape by air between structures by providing more sealing surfaces, less air would escape a structure resulting in a more insulating structure. The combination of the references is thus obvious as set forth above. Fourthly, as a kit contains many parts, which part/parts do they use to satisfy their insulating need? Do they use only the parts as claimed? Their declarations are thus not persuasive.

With respect to applicant's statement that Tom Donofrio specifically refers to applicant's claimed two-part design, examiner respectfully states that the declaration is insufficiently clear and does not commensurate with the scope of the claim 14. Furthermore, George Temme is an inventory coordinator for his company, is he directly involved in the purchasing of the product or

negotiations of the purchase of the product? What factors were involved in his company's purchase of the product? Is it commercial relationship, advertisement, special discounts, technical solutions or something else? Does his company only use the parts in the claims to arrive at the better results? Are there other reasons for better insulating results, like better installation or housing structural designs? The declaration by George Temme is thus also found not persuasive.

With respect to exhibit Q, applicant states that the statement "because the lid of the Energy Guardian kits fits right into the frame without any hooks or devices to secure the air" refers to the closure member's frictional and snug engagement with the closure member and map claim 14, examiner respectfully disagrees. The exhibit certainly does not map the claim 14. What are the shapes of the lid and the frame? The exhibit does not state anything about "frictional and snug engagement with the closure member" as set forth by applicant. The exhibit does not refer to the central portion and other claimed limitations of claim 14. The exhibit does not commensurate with the scope of the claim. Argument is thus moot.

With respect to exhibit D, respectfully states that the exhibit does not commensurate with the scope of the claims. It is unclear what structures AEM Custom Builders refer to. Also, the exhibit is insufficient to demonstrate unexpected result and commercial success.

With respect to exhibit E and EE, examiner respectfully states that the exhibit does not commensurate with the scope of the claims. It is unclear what structures Aleshire refer to. What is the make up of the structures? How many units have been used/sold? How many clients use the product? The exhibit is thus insufficient to demonstrate unexpected result and commercial success also.

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With respect to exhibit Q, applicant states “ air sealing qualities of [Applicant’s] kits are great” and that these qualities are directly traceable to the claimed sealing relationship, examiner respectfully disagrees. There is insufficient information on the exhibit to clearly point out that the exhibit, is describing the claim 14. The exhibit does not clearly sets forth any structures that can clearly relate to the claim 14.

With respect to Vic Aleshire of Exhibits E and EE, examiner respectfully points out once again that the exhibits have insufficient information to clearly point out that the exhibits are describing claim 14. The exhibits are thus not commensurate with the scope of the claim.

With respect to Doug Ryse’s testimonial, Exhibit M, the exhibit does not commensurate with the scope of the claim. It is unclear from the exhibit what the structure of the Kit is, and how it relates to the claim.

With respect to applicant’s statement of having shown commercial success in the form of replacement of earlier products and increased market share, examiner states that applicant has not provided sufficient evidence that the commercial success is due to technical feature of the product or due to other commercial factors.

With respect to exhibits Q, R, S, V, F, EE, FF, U, W, DD, examiner respectfully states that the exhibits do not have information commensurate with the scope of the claims. It is unclear from the exhibits what kind of structures are involved. It is also unclear if any commercial success would result from the structures as claimed.

3. The Declaration under 37 CFR 1.132 filed 7/16/07 is insufficient to overcome the rejection of claims 14, 22, 24-25, 27-29, 31-32 based upon Waters et al, Helbig, Daw et al, Porter, Fuller, Anghinetti, as set forth in the last Office action because the claims are obvious in

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view of the references. The Exhibits in the Declaration have been addressed above and will not be repeated here.

Allowable Subject Matter

1. Claims 17, 21 are allowed.

Conclusion

2. This is a RCE of applicant's earlier Application No. 10/024478. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phi D A whose telephone number is 571-272-6864. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 571-272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Phi Dieu Tran A



8/30/07

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